

REMARKS

Reconsideration and allowance of the present case in view of the above amendments and the remarks herein is respectfully requested.

Status of Claims

By this Amendment, claims 1, 8 and 14 are cancelled without waiver, prejudice or estoppel. Claims 2-4, 6-7, 9, 11-13, 15-16 and 18 have been amended. Applicants therefore request entry of the amendments and allowance of pending claims 2-4, 6-7, 9, 11-13, and 15-18.

Allowable Claims

Applicants acknowledge the Examiner's indication that claims 6-8 and 11 are allowable if rewritten in Independent form. Each of claims 6, 7, and 11 have been amended to include the limitations of claim 1 from which they depended. The subject matter of claim 8 has been incorporated into claim 7.

The remaining claims have been amended solely to change dependency to one of allowable claims 6, 7 or 11, thus are allowable as well.

Objection to the Specification

The specification was objected to as allegedly failing to provide antecedent basis for the claimed the subject matter with respect to the language "the energy for aerosolization is supplied solely by the user" contained in claim 14 (it is believed the Action meant to refer to claim 14 rather than claim 1). Applicants have deleted claim 14.

Claim rejections under 35 USC §102

1. Claims 1, 9, 12 and 13 were rejected under 35 U.S.C. §102 (b) as allegedly anticipated by *Steil*, US 3,918,451.

For a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention. Non-disclosure of a single element, feature or limitation of the claim negates anticipation.

This rejection is thus respectfully traversed with respect to the application of *Steil et al.* to amended claims 9 (now dependent from allowable claim 7) and claims 12-13 (now dependent from allowable claim 11). *Steil et al.* does not disclose at least the elements of a housing and an end section associated with the housing, nor a shield structure which functions to protect the air inlets from inadvertent blockage. In particular, *Steil et al.* does not disclose or suggest a shield structure which comprises at least two covering portions, each covering portion covering at least one inlet, wherein the two covering portions are diametrically opposed, nor covering portions separated by open portions, nor open portions providing access to at least one air inlet, nor a puncture member adapted to puncture only one end of a capsule.

It should also be noted that bottom-formed air inlets of *Steil et al.* cannot be tangentially oriented, thus are incapable of creating applicants' swirling airflow as claimed in claim 13.

With respect to the rejection of individual elements claimed in the dependent claims, as the independent claims are allowable over the prior art of record, then their dependent claims are allowable as a matter of law, because these dependent claims contain all features/elements/steps of their respective independent claim. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the allowability of independent claims 6, 7 and 11, the dependent claims recite further features/steps and/or combinations of features/steps (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

2. Claims 1-4, 9 and 12-13 were rejected under 35 U.S.C. §102 (b) as allegedly anticipated by *Ohki et al.*, US 5,619,985.

This rejection is respectfully traversed. *Ohki et al.* does not disclose or suggest at least the elements of a housing and an end section associated with the housing, nor a shield structure which functions to protect the air inlets from inadvertent blockage. In particular, *Ohki et al.* does not disclose or suggest a shield structure which comprises at least two covering portions, each covering portion covering at least one inlet, wherein the two covering portions are diametrically opposed, nor covering portions separated by

open portions, nor open portions providing access to at least one air inlet, nor a puncture member adapted to puncture only one end of a capsule.

3. Claims 14, 15 and 18 were rejected under 35 U.S.C. §102 (b) as allegedly anticipated by *Gottenauer et al.*, US 5,881,719.

This rejection is respectfully traversed. As discussed above, *Gottenauer et al* similarly does not disclose suggest at least the elements of a housing and an end section associated with the housing, nor a shield structure which functions to protect the air inlets from inadvertent blockage. In particular, *Gottenauer et al.* does not disclose or suggest a shield structure which comprises at least two covering portions, each covering portion covering at least one inlet, wherein the two covering portions are diametrically opposed, nor covering portions separated by open portions, nor open portions providing access to at least one air inlet, nor a puncture member adapted to puncture only one end of a capsule.

More specifically, *Gottenauer et al* does not disclose a capsule, but is instead designed to use with a blister, which has an entirely different geometry and is structurally different. The blister is not punctured, but is "pressed out" to release the powder contained therein.

Claim rejections under 35 USC §103

4. Claims 16 and 17 were rejected under 35 U.S.C. §103 (a) as allegedly obvious over *Gottenauer et al.*, US 5,881,719, in view of Gupte, US 5,685,294.

This rejection is respectfully traversed. Claims 16 and 17 depend, (directly and indirectly) from amended Independent claim 11, thus they are patentably distinct for the same reasons given in regard to rejection made under 35 U.S.C. §102. Additionally and notwithstanding the foregoing reasons for the allowability of independent claim 11, the dependent claims recite further features/steps and/or combinations of features/steps (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

CONCLUSION

The claims are allowable for the reasons given above, and an allowance is respectfully requested

If a telephone conference would expedite the allowance of this application, the Examiner is requested to call the undersigned at (650) 283-6790.

Respectfully submitted,
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